

1 THE HONORABLE JOHN C. COUGHENOUR

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6 UNITED STATES DISTRICT COURT
7 WESTERN DISTRICT OF WASHINGTON
8 AT SEATTLE

9 ELILE ADAMS,

10 Petitioner,

11 v.

12 BILL ELFO, *et al.*,

13 Respondents.
14

CASE NO. C19-1263-JCC

ORDER

15 This matter comes before the Court on Petitioner Elile Adams' objections (Dkt. No. 70)
16 to the third Report and Recommendation (R&R) of the Honorable Michelle Peterson, United
17 States Magistrate Judge (Dkt. No. 69). Having thoroughly considered the parties' briefing and
18 the relevant record, the Court finds oral argument unnecessary and hereby OVERRULES
19 Petitioner's objections and ADOPTS the R&R for the reasons explained herein.

20 The Court described the facts of this case in prior orders, (*see* Dkt. Nos. 43, 54), and will
21 not repeat them here, except as relevant to the instant R&R and related objections. Following
22 Petitioner's motion for reconsideration (Dkt. No. 56), the Court referred the matter to Judge
23 Peterson to consider the following issue: "whether the fact that Public Law 280 predates federal
24 recognition of the Nooksack Tribe impacts [Judge Peterson's] determination that the Nooksack
25 Tribal Court did not plainly lack jurisdiction over the Suchanon allotment at the time of
26 [Petitioner's] arrest." (Dkt. No. 62 at 2.) Following supplemental briefing, Judge Peterson issued

1 a third R&R (Dkt. No. 69). In it she concluded that, even if Public Law 280 predated federal
2 recognition of the Nooksack Tribe, the Tribal Court did not plainly lack jurisdiction over the
3 Suchanon allotment at the time of Petitioner’s arrest. (*See id.* at 10–11.) Petitioner again objects
4 to Judge Peterson’s recommendation. (Dkt. No. 70.)

5 A district court reviews *de novo* those portions of a report and recommendation to which
6 a party objects. *See* 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72(b)(3). Objections are required to
7 enable the district court to “focus attention on those issues—factual and legal—that are at the
8 heart of the parties’ dispute.” *Thomas v. Arn*, 474 U.S. 140, 147 (1985). General objections, or
9 summaries of arguments previously presented, have the same effect as no objection at all, since
10 the Court’s attention is not focused on any specific issues for review. *See United States v.*
11 *Midgette*, 478 F.3d 616, 622 (4th Cir. 2007). “The district judge may accept, reject, or modify
12 the recommended disposition; receive further evidence; or return the matter to the magistrate
13 judge with instructions.” Fed. R. Civ. P. 72(b)(3).

14 Petitioner lodged a number of general objections to Judge Peterson’s third R&R, which
15 the Court need not address. *See Ali v. Grounds*, 236 F. Supp. 3d 1241, 1249 (S.D. Cal. 2017)
16 (citing *Goney v. Clark*, 749 F.2d 5, 7 (3d Cir. 1984)). At issue is Petitioner’s specific objection
17 that Judge Peterson erred in failing to consider that Congress’s 1970 amendment to Public Law
18 280 granted state governments “exclusive jurisdiction” over Indian crimes on enumerated Indian
19 lands. (Dkt. No. 70 at 4 (citing 18 U.S.C. § 1162(c).) Petitioner is correct that Washington does
20 have jurisdiction over the Suchanon allotment. *See State v. Cooper*, 928 P.2d 406 (Wash. 1996).
21 But the notion that this jurisdiction is exclusive of the Nooksack Tribal Court’s is not supported
22 by the legislative history of Public Law 280 or courts’ interpretations of the statute.

23 The legislative history of Public Law 280 indicates that its purpose was a jurisdictional
24 transfer between the state and federal government, not between the state and tribal governments,
25 and it was done to supplement tribal authority, not divest it. *See, e.g.*, S.Rep. No. 699, 83d Cong.,
26 1st Sess., *reprinted in* 1953 U.S. Code Cong. & Admin. News 2409, 2412 (“[T]here has been

1 created a hiatus in law-enforcement authority that could best be remedied by conferring criminal
2 jurisdiction on States indicating an ability and willingness to accept such responsibility.”) As the
3 Assistant Secretary of the Interior stated to Congress in 1970, “[the] new language . . . [was] not
4 intended . . . to have any bearing on actual or potential arrangements between States and the
5 tribes which [sic] respect to the allocation of law enforcement responsibility between them . . .
6 [and] *no effect on whatever inherent jurisdiction particular tribes may have retained in states*
7 *which were given or have assumed jurisdiction pursuant to . . . [Public Law 280] as amended.”*
8 116 H. Cong. Rec. 37,354 (1970) (emphasis added).

9 Similarly, the Supreme Court has consistently emphasized that Public Law 280 is not a
10 divestiture statute. *See Bryan v. Itasca County*, 426 U.S. 373, 383–390 (1976); *California v.*
11 *Cabazon Band of Mission Indians*, 480 U.S. 202, 222 (1987). In addition, the Ninth and Eighth
12 Circuits have held that Public Law 280 establishes *concurrent* jurisdiction between tribes and
13 states. *Native Village of Venetie I.R.A. Council v. State of Alaska*, 944 F.2d 548 (9th Cir. 1991)
14 (“Public Law 280 was designed not to supplant tribal institutions but to supplement them.”);
15 *Walker v. Rushing* 898 F.2d 672, 675 (8th Cir. 1990) (“Public Law 280 did not divest Indian
16 tribes of their sovereign power to punish their own members for violations of tribal law. Nothing
17 in the wording of Public Law 280 or its legislative history precludes concurrent tribal
18 authority.”). This view has also been professed by the Washington State Supreme Court, which
19 indicated that “both the state and tribe may have jurisdiction in any given criminal case, and
20 prosecution by one does not bar the other from also charging an offender with a crime arising out
21 of the same conduct.” *State v. Shale*, 345 P.3d 776 (Wash. 2015) (*citing State v. Moses*, 37 P.3d
22 1216 (Wash. 2002)).

23 Accordingly, Judge Peterson did not err in concluding that the Nooksack Tribal Court did
24 not plainly lack jurisdiction over the Suchanon allotment, irrespective of whether federal tribal
25 recognition predated Public Law 280. This is because Public Law 280 has no impact on the
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1 Tribe's authority over the allotment, regardless of the "exclusive" language presently contained
2 in the statute.

3 For the foregoing reasons, Petitioner's objections to the R&R (Dkt. No. 70) are
4 OVERRULED. The Court ADOPTS the Judge Peterson's third R&R (Dkt. No. 69) and DENIES
5 Petitioner's motion for reconsideration (Dkt. No. 56).

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7 DATED this 3rd day of June 2021.

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11 John C. Coughenour
12 UNITED STATES DISTRICT JUDGE
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